

Judge's decision in PG&E bankruptcy favors fire victims, legal experts say

4-5 minutes

A bankruptcy judge's decision to allow a San Francisco jury to decide if the Pacific Gas & Electric Co. should be held liable for a 2017 wildfire that killed 22 people favors the fair and prompt compensation of the victims, a legal expert said, when contrasted with what could be a more competitive process to confirm a plan of reorganization.

U.S. Bankruptcy Judge [Dennis Montali](#) was "focused on making sure the fire claimants get a fair shake" in declining to open the door to competing proposals to reorganize PG&E and lifting the freeze on a state court jury trial to determine whether the utility caused the Tubbs fire, according to USC Gould School of Law professor Robert Rasmussen.

"Time and time again, tort victims don't get paid in full," he said. "Montali understands that and is making sure that doesn't happen."

While PG&E retained its exclusive right to propose a plan to emerge from bankruptcy, the utility will now have to face a jury trial over liability and damages in the second most destructive wildfire in state history that destroyed 5,600 structures in Sonoma and Napa Counties.

PG&E attorneys have argued Montali should determine liability and damages over the Tubbs fire.

"Regardless of the next legal steps, Cal Fire has already determined that the cause of the 2017 Tubbs Fire was not related to PG&E equipment," said spokesperson Lynsey Paulo.

The judge departed from what would have been his decision to terminate PG&E's exclusivity because it would be of "no benefit to the victims and is antithetical to the court's and other parties' repeated stated goal of compensating the victims."

Montali ruled, "The inescapable fact is that the fire victims and their insurers should not need to wait for conclusion of expensive, lengthy and uncertain disputes that only indirectly concern them." He remarked at a hearing last week that the two issues "have a lot of overlap and are interrelated."

Rasmussen called the order "refreshing" because Montali "is so candid about his thought process and what's motivating him" in largely discretionary decisions. He said Montali is signaling the fire victims' "legitimate recovery" needs are "first and foremost."

"Montali could have gone either way, and there's no way any one would second-guess him," he said.

According to the ruling issued Friday, "it seemed likely that [exclusivity] would be terminated for a variety of reasons," including arguments from the state Public Utilities Commission and the governor's office that it would result in more competition to "credible and confirmable" plans, and because he did so in PG&E's 2001 bankruptcy.

"The court has no doubt that their hard bargaining would result in refinement if not resolution," of major issues in confirming a plan of reorganization, Montali wrote.

But the committee representing wildfire claimants, together with the group representing insurers and some shareholders, continued to argue at a hearing Wednesday that PG&E is undermining due process through legislation that imposed a deadline for the utility to participate in a multi-billion-dollar wildfire mitigation fund.

PG&E only qualifies for the fund if it emerges from bankruptcy by next June, which all parties agree is not much time. Its exclusivity period expires at the end of next month, and the utility said it will file a plan by Sept. 9.

Montali must estimate the extent of PG&E's liability in the 2017 and 2018 wildfires and confirm a proposal of reorganization in that time frame. The California Public Utilities Commission said it needs at least six months to evaluate the plan's effect on ratepayers before it is passed.

On the pause over litigation in the Tubbs fire being lifted, Frank Pitre, the lead attorney representing wildfire victims in state court, said PG&E only filed for bankruptcy because it did not want jury trials over wildfire liability and damages.

"They took advantage of [AB1054] and used it as a bookend to cripple plaintiffs," he said. Pitre aims to have a verdict by January.

Michael Danko, representing fire victims, said plaintiffs' attorneys will file a motion for trial preference for the eight named plaintiffs in the Tubbs fire litigation this week.

#353989
